

Historical Perspective on DOE Order 142.3 *Unclassified Foreign Visits & Assignments*

Presentation at the National User Facility
Organization's 2010 Annual Meeting

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Overview

- Historical Overview of Foreign Visits & Assignments Program at DOE
- What Occurred in 2009 through 2010
- NUFO's Role and Accomplishments

DOE P 142.1, Unclassified Foreign Visits & Assignments (7/14/1999)

International cooperation and collaboration is an important element in the effective planning and implementation of many Department of Energy (DOE) programs. DOE and its international partners benefit from the exchange of information that results from a managed process of unclassified visits and assignments by foreign nationals. These visits and assignments must be conducted in a manner consistent with U.S. and DOE national security policies, requirements, and objectives including export control laws and regulations.

DOE N 142.1, Unclassified Visits & Assignments (7/14/1999)

To provide interim Department of Energy (DOE) requirements and responsibilities for unclassified visits and assignment by foreign nationals to DOE facilities for unclassified activities. This Notice supplements DOE P 142.1 dated 7-14-99, which sets overall Departmental policy on unclassified foreign visits and assignments. It is a complement to existing counterintelligence and security orders and policies. DOE N 251.53, dated 05/14/03, extends this directive until canceled. Cancels: DOE 1240.2B

DOE O 142.3 Chg 1, Unclassified Foreign Visits & Assignments Program (6/18/2004)

The order defines a program for unclassified foreign national access to Department of Energy sites, information, and technologies. The page change streamlines the HQs Management Panel review process to include reviews by HSS, IN, and a representative of the cognizant under secretary for access requests involving foreign nationals. Cancels Secretarial Memorandum, Unclassified Foreign Visits and Assignments, dated 7-14-99; Memorandum from Francis S. Blake, Departmental Use of Foreign Access Central Tracking System, dated 11-05-01; **Memorandum from Kyle E. McSlarrow, Interim Guidance for Implementation of the Department's Unclassified Foreign Visits and Assignments Program, dated 12-17-02**; and Secretarial Memorandum, Policy Exclusion for Unclassified Foreign National's Access to Department of Energy Facilities in Urgent or Emergency Medical Situations, dated 4-10-01. Cancels: DOE P 142.1 and DOE N 142.1

First Meeting of User Facility Administrators and UEC Chair s Occurred 10/2003

The meeting will serve as an information exchange and fact-finding mechanism to educate the User Facility Administrators and UEC Chairs on the policies for non-US citizen access into the US and the Foreign Visits & Assignments Program for national laboratories. Invited speakers will include individuals from the Department of State, Office of Technology Policy, Office of Security/Office of Science, and the American Physical Society.

<http://www.nufo.org/meetings/>

Time Line of Events 2009 to present*

April 2009: NUFO conducts benchmarking exercise on foreign visits and assignments at national laboratories

June 2009: NUFO decides to address issue with DOE

July 2009: Laboratories made aware of an upcoming RevCom request which prompted user administrators to work on a unified response

August 2009: At least four labs responded with unified response to DOE

*Other events that contributed include NLDC addressing burdensome DOE Orders and Steve Chu appointed Secretary of Energy

Time Line of Events cont.

September 2009: NUFO writes to Steven Chu requesting NUFO work with DOE to rewrite Order

October 2009: DOE is instructed to expedite a rewrite of the Order with a completion target date of December 2009

October 2009: NUFO invited to work with DOE team

March 2010: Memorandum from Deputy Secretary Poneman providing immediate relief from DOE Order

Time Line of Events cont.

May 6, 2010: Revised Order is released in RevCom

May 25, 2010 Responses due to RevCom

NUFO Issues Raised with DOE

- The DOE Order was confusing and open to interpretation, which resulted in inconsistent implementation across the laboratories.
- Site access approval varies drastically among laboratories. Indices approvals result in delays and are counterproductive to science programs.
- Compliance with DOE Order 142.3 is difficult and costly for the laboratories and negatively impact the science environment and scientific programs at user facilities.

NUFO Issues Raised with DOE cont.

- User facilities are engaged in non-classified, non-sensitive, fundamental research with results available in the open literature. The vetting process for Labs that have both user facilities and classified programs inhibit the scientific environment for the user facilities and create circumstances where scientists will go elsewhere to conduct their research.

NUFO asked that DOE Consider

- Formation of a review team to rewrite the DOE Order 142.3.
- Use the expertise of the user administrators working at these facilities to assist the review team to address concerns and make improvements to the Order.
- NUFO suggested that temporary site level access approval be granted to local authorities.

My Major Goals for Rewrite of Order

- Grant laboratories site-level access approval for sensitive country foreign nationals conducting fundamental research at non-classified, non-security areas and facilities within their laboratories.
- Removal of requirement to complete background checks (known as indices) prior to granting site access.
- Ensure NNSA sites with user facilities were included in relief.

Major Goals for Rewrite of Order cont.

- Remove specific language in Order regarding immigration documentation and replace with language that simply states documentation that ensure proper legal status.
- Make the Order clear and unambiguous.

Major Hurdles that were Overcome

- Meet the intended goals of the Order while:
 - Complying with existing federal and immigration laws,
 - Addressing counterintelligence concerns,
 - Providing information to the Federal Access Central Tracking System (FACTS)
 - Allowing scientific collaboration and experiments to be conducted.
- Property Protection Areas (PPA) versus General Access Areas (GAA)
- Access to NNSA sites versus DOE sites

Major Hurdles that were Overcome cont.

- Tier 3 versus Tier 2 access at DOE sites
- Federal access versus contractor site access

DOE Order 142.3 – BIG WINS

- User facilities at NNSA sites are covered
- Indices do not have to be completed for site access unless individuals are discussing sensitive subjects or entering into sensitive areas or are born in state-sponsors of terrorist countries.
- Lawful permanent residents will be treated like US citizens
- Specific USCIS language has been removed

DOE Order 142.3 – BIG WINS

- Individuals from SSTs can be granted site access after 30 days unless justification is provided to laboratory and site managers or HQ cognizant program officer consults, which warrants a delay
- Approval of extensions can be done by the sites
- FACTS requirements will change

What Has NUFO Accomplished

- Formation of a review team to rewrite the DOE Order 142.3.
 - This was done
- Use the expertise of the user administrators working at these facilities to assist the review team to address concerns and make improvements to the Order.
 - This was done
- NUFO suggested that temporary site level access approval be granted to local authorities.
 - This was done

What Else has NUFO Accomplished

- This interaction opened a channel of communication between NUFO and DOE
- DOE knows who NUFO is
- Set ground work for future collaborative initiatives with DOE

NUFO MADE A DIFFERENCE